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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL MACEK,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 04-17446

D.C. No. CV-01-00984-RCB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Robert C. Broomfield, District Judge, Presiding

Submitted November 8, 2005 ^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Michael Macek appeals pro se the district court's order denying his motion for summary judgment and granting summary judgment to the Internal Revenue

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Service (“IRS”). We have jurisdiction pursuant to 28 U.S.C. § 1291. After de novo review, *Arakaki v. Hawaii*, 314 F.3d 1091, 1094 (9th Cir. 2002), we affirm.

The District Court correctly determined that Macek is not entitled to a refund for 1996 and 1997 merely because he was granted a refund on similar grounds for 1995, because the IRS investigated each tax year separately to determine what unreported income and exemptions would apply. Res judicata does not apply as the 1995 refund was never litigated.

The district court properly concluded that a deficiency determination by the IRS is entitled to a presumption of correctness if it is based on some substantive evidence that the taxpayer received the unreported income. *See Hardy v. Comm’r*, 181 F.3d 1002, 1004 (9th Cir. 1999). The IRS provided a sufficient evidentiary foundation for its counterclaim, including evidence Macek made cash withdrawals from accounts of companies he was involved in, and Macek’s declaration that he lived off of his personal savings from 1993-1997, despite records showing that he declared bankruptcy in 1993.

The district court did not abuse its discretion in denying Macek’s motion for reconsideration because Macek failed to demonstrate that the court erred in exercising jurisdiction over the IRS’s counterclaim. *See Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). The IRS provided sufficient

documentation to demonstrate compliance with the procedural and jurisdictional requirements of 26 U.S.C. § 7401 and 26 U.S.C. §§ 6212 and 6213.

Macek's remaining contentions lack merit.

Macek's motion for sanctions under 28 U.S.C. § 1927 is denied.

AFFIRMED.